

## *Rekabe v Foxline Logistics* [2013] WADC 104

### Key Points

- Workers Compensation Case Update.
- In *Rekabe*, the District Court considered the extended definition of “worker” under section 5 of the *Workers’ Compensation & Injury Management Act* 1981 and the relevant principles for determining whether a contractor would be considered a “worker” and therefore able to claim workers’ compensation.

#### Section 5:

An employee engaged under a contract of service is a “worker” for the purposes of the Act. In addition, in certain circumstances, a contractor engaged under a contract for services, will be a “worker”. The extended definition under s5(1)(b) defines as a worker: “any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services.”

### Background

Mr Rekabe was an independent contractor hired by Foxline Logistics as a delivery driver. Mr Rekabe owned and maintained his own 5.5 tonne truck and he was responsible for petrol, maintenance, insurance and registration.

Mr Rekabe was paid the “run rate” which was calculated as 80% of the monthly gross amount that Foxline invoiced its clients, less operational expenses, plus an allowance based on the tonnage of Mr Rekabe’s truck, multiplied by the number of runs completed.

The arbitrator considered the relevant authorities and concluded that a significant component of the remuneration provided to Mr Rekabe was for his provision of a fully maintained truck. Therefore, Mr Rekabe was not remunerated “in substance for personal manual labour or services” and therefore was not a worker under the extended definition.

### The Law

Mr Rekabe applied for leave to appeal to the District Court on 5 grounds. The most significant ground was ground 2 which argued that the arbitrator erred in law in deciding that 'other income' was not remuneration in substance for Mr Rekabe's personal manual labour or services and in failing to take into consideration all of the evidence.

Her Honour Judge Davis of the District Court considered the relevant authorities and confirmed that there is a 3 step process in considering the extended definition of “worker” identified in *Summit Homes v Lucev* (1996) 16 WAR 566 (576) by Ipp J, confirmed in *Australian Institute of Management*

v Rossi [2004] WASCA 302 and Minniti & Son Builders v Luigi De Cinque [2008] WACC C26-2008 [15] - [20].

“(1) The first step is to determine whether the contractor was being remunerated for his personal manual labour or services alone. If the answer to that is no, it is then necessary to move to the next two steps;

(2) *The second step is to make findings as to the extent to which the contractor was remunerated for personal manual labour or services on the one hand and for other matters which cannot be classified as the provision of personal manual labour or services;*

(3) *The third step requires a judgment to be made as to whether the remuneration, overall, was 'in substance' for the personal manual labour or services provided (notwithstanding the provision of the other matters).”*

Her Honour observed that, what was being argued on Mr Rekabe's behalf was that the arbitrator ought not have taken into account the cost of the truck he purchased in order to equip himself to carry out the independent contractor agreement.

Her Honour observed that the arbitrator had taken the view that it was too difficult to precisely dissect Mr Rekabe's monthly pay into remuneration that was in return for his manual labour and remuneration that was a return for 'something else'. In the circumstances the arbitrator was, as a matter of law, entitled to take a broad approach to all of the evidence.

Her Honour concluded that the relative significance or relevance of the contractor's costs of equipping himself to perform the relevant contract was a question of fact for the arbitrator and could not be challenged on appeal.

## Conclusion

The decision of *Rekabe*, confirms the 3 step process for considering the extended definition of “worker” under s5 of the Act. The judgment also reiterates that findings of fact by an arbitrator are not open to challenge on appeal.

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